County. On October 31, 1951, the local board mailed him a classification questionnaire (SSS Form No. 100), which he returned to the local board on or about November 13, 1951. He did not, in or by that questionnaire, indicate what classification he desired. He did, however, sign the statement in Series XIV of that questionnaire. That statement was as follows:

"By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration."

Accordingly on or about November 16, 1951, the local board mailed appellee a conscientious objector form (SSS Form No. 150), which he returned to the local board on or about November 21, 1951. He did not sign either of the statements in Series I of that form,[1] nor did he, in or by that form, indicate what

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[1]Series I was as follows:

"Series I.—CLAIM FOR EXEMPTION.

"INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

"(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service in the Armed Forces.

.....

(Signature of registrant)

"(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore,

classification he desired. However, on January 22, 1952 the local board classified him I-A-O[2] and mailed him a notice of that classification (SSS Form No. 110). On February 5, 1952—14 days after mailing that notice—the local board received from appellee a letter dated February 1, 1952, reading as follows:

"I request an appeal of my classification. I received my notice of classification two days ago. It stated that I had been classified I-A-O. If you recall my Conscientious Objector application,[3] this is not the classification I desire, and not the classification I will be satisfied with.

"If you considered my C.O. application at its word, I do not see how this classification resulted. My objections are as sincere as possible, as those whom I recommended will, or have, testified.

"My views do not stem from a church or religious sect. I am a member of the Lutheran Church back home and this church is not registered as being opposed to going to war as we are. But I am a Christian. And if a Christian reads the life of Christ and accepts the fifth commandment, unqualified, he cannot help but refuse to kill for any reason whatsoever, self-defense or not.

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claim exemption from both combatant and noncombatant training and service in the Armed Forces.

(Signature of registrant)"

[2]Which is to say, it classified him as a conscientious objector available for noncombatant military service only. See 32 C.F.R. § 1622.11.

[3]Meaning, we suppose, his conscientious objector form (SSS Form No. 150).

"I have read the history of our nation, and find it a truly great history. And when I read what it was that inspired our nation's founders, 'the unalienable right to life'—iterated and reiterated throughout the growth of our national spirit, I too accept this freedom which has been held so close. Unalienable—that's what I consider the right to life, and whether North Korean soldier, kidnapper, rapist, murderer, or what, I believe their life, the most priceless, greatest possession one, all, can have should not be taken away.

"And with this view how can I fill a noncombatant position?[4] What is the ethical difference between pulling a trigger to release a bullet or sending an order to buy one, between releasing another to fight or fighting yourself? I see none.

"Please carefully reconsider your classification. I can ask of you nothing more."

Thus, in effect, appellee requested the local board to reopen his classification and consider it anew.[5] The local board did so and, on July 23, 1952, classified him II-S[6] and mailed him a notice of that classification (SSS Form No. 110). That classification was based on representations made to the local board by W. G. Greenman, director of Deep Springs College,[7]

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[4]Appellee had not previously indicated to the local board that he was opposed to participation in noncombatant training and service in the Armed Forces.

[5]See 32 C.F.R. §§ 1625.1-1625.4, 1625.11-1625.14.

[6]Which is to say, it classified him as a registrant deferred because of activity in study. See C.F.R. § 1622.25.

[7]A junior college at Deep Springs, California.

and by Robert D. Howard, dean of that college, to the effect that appellee was a full-time student at that college.[8] However, on September 13, 1952, Greenman wrote the local board a letter stating that appellee was no longer enrolled as a student at that college. Accordingly, the local board, on its own motion, reopened appellee's classification, considered it anew and, on September 23, 1952, classified him I-A-O and mailed him a notice of that classification (SSS Form No. 110). On January 12, 1953, the local board ordered him to report for induction. He did so report and, on February 13, 1953, was inducted as a conscientious objector available for noncombatant military service only. Thereafter he deserted, was apprehended and, while awaiting trial by court-martial, was detained in the custody of appellant, Lieutenant General W. G. Wyman, commanding officer of the Sixth Army at the Presidio of San Francisco, California.

While so detained, appellee, on April 21, 1954, filed in the United States District Court for the Northern District of California a petition for a writ of habeas corpus. Upon the filing of the petition, the District Court issued an order directing appellant to show cause on May 4, 1954, why a writ of habeas corpus should not be issued as prayed for.[9] The order to show

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[8]Such representations were made by Greenman in letters to the local board dated January 26, 1952 and June 17, 1952, and in a college student certificate (SSS Form No. 109) dated June 17, 1952, and by Howard in a college student certificate (SSS Form No. 109) dated March 20, 1952, and in a letter to the local board dated March 21, 1952.

[9]See 28 U.S.C.A. § 2243.

cause was served on appellant on April 26, 1954, but he did not, nor did anyone for him, make any return or answer thereto.[10] However, on May 7, 1954, hearings were had at which appellant was represented by counsel. Appellee was permitted to, and did, in person and by counsel, attend, participate in, and adduce evidence at the hearings. His evidence consisted of his Selective Service file and his own testimony. On June 18, 1954, the District Court made and entered the following order:

"This matter having been heard, briefed and submitted for ruling,

"The Court finds that petitioner [appellee] submitted a letter to his draft board[11] after it had classified him I-A-O, and that such letter constituted an appeal, thus depriving the local board of jurisdiction over petitioner; that no hearing was ever accorded petitioner on appeal, nor was any appeal granted, all of which constituted a denial of due process of law (*Knox v. United States,* 200 F. 2d 398).

"The Court further finds that even though petitioner's letter be construed as a request for reconsideration by his draft board, no hearing was ever accorded him pursuant to such request with respect to his basic classification of I-A-O (as distinguished from a temporary deferment of II-S granted at the behest of petitioner's school head), thus denying him due process of law.

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[10]See 28 U.S.C.A. §§ 2243 and 2248.

[11]In this order, the local board was called a draft board.

"There is credible evidence that petitioner was wantonly beaten while confined at the Presidio in San Francisco. However, such treatment forms no part of the Court's consideration of this petition.

"The petitioner may have his relief as prayed, upon preparation of findings of fact and conclusions of law.[12]

"It is ordered that the petition for writ of habeas corpus be, and the same hereby is, granted."

Although, as indicated above, the petition for a writ of habeas corpus was granted by the order of June 18, 1954, no writ of habeas corpus was ever issued in this case. However, on June 23, 1954, the District Court made and entered the following order:

"To Lieutenant General W. G. Wyman, or any other commanding officer of the Sixth Army, Presidio, San Francisco, California:

"It appearing on the return of the writ of habeas corpus allowed by this Court[13] that Russell Louis La-Rose was illegally inducted into the Army of the United States and is illegally detained by you as a member thereof,

"You are therefore hereby commanded forthwith to discharge him from your custody or control as a member of the Army of the United States."

On June 24, 1954, the District Court made and entered an order similar to the order of June 23,

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[12]So far as the record shows, no such findings or conclusions were ever prepared. If prepared, they were never filed.

[13]No such writ having been issued, there was, of course, no such return.

1954, except that the word "release," instead of "discharge," was used in the order of June 24, 1954. This appeal was taken on August 11, 1954.

The petition alleged that appellee's I-A-O classification of January 22, 1952, was "without basis in fact." However, the District Court did not so find, nor did the evidence warrant such a finding. Instead, the evidence showed that appellee's I-A-O classification of January 22, 1952, was based on his own statement in Series XIV of his questionnaire (SSS Form 100).[14]

The petition alleged, in substance, that appellee filed with the local board on February 1, 1952, a notice of appeal from his I-A-O classification of January 22, 1952; that the local board failed to transmit his Selective Service file to the appeal board; and that consequently his appeal was never considered. However, the District Court did not find that appellee filed a notice of appeal on February 1, 1952, nor did the evidence warrant such a finding. Instead, the evidence showed that no notice of appeal was filed by appellee on February 1, 1952, or at any other time.[15]

As indicated above, the District Court found that appellee "submitted a letter to [the local board] after it had classified him I-A-O," and that "such letter constituted an appeal,[16] thus depriving the local board

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[14]This appeared from appellee's Selective Service file, put in evidence by appellee himself.

[15]Such a notice, if filed, should have been, and presumably would have been, placed in appellee's Selective Service file. However, that file contained no such notice.

[16]Meaning, we suppose, that it constituted a notice of appeal. See 32 C.F.R. § 1626.11.

of jurisdiction over [appellee]." The evidence showed that appellee submitted four letters to the local board after his I-A-O classification of January 22, 1952—the letter dated February 1, 1952, and three others—but none of the four letters constituted an appeal or a notice of appeal.

It is true that the word "appeal" was used in the letter dated February 1, 1952, but the context clearly showed that appellee was not thereby taking an appeal, but, was, in effect, requesting the local board to reopen his classification and consider it anew[17] which the local board did. Furthermore, the letter dated February 1, 1952, was not received by or filed with the local board until February 5, 1952—four days after the expiration of the time for appealing from appellee's I-A-O classification of January 22, 1952.[18]

As indicated above, the District Court found that "even though [appellee's] letter be construed as a request for reconsideration by [the local board], no hearing was ever accorded him pursuant to such request," meaning, we suppose, no hearing attended by appellee in person. No such hearing was requested by appellee,[19] nor was he in any way prejudiced by the failure to accord him such a hearing. The reconsideration requested and obtained by him resulted in his being put in a lower class (II-S instead of I-A-O, thus benefiting instead of prejudicing him.

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[17]Cf. United States v. Vincelli, 2 Cir., 215 F. 2d 210.

[18]See 32 C.F.R. § 1625.2.

[19]See 32 C.F.R. §§ 1624.2 and 1625.13.

It should be noted that the local board's order of January 12, 1953—the order requiring appellee to report for induction—was not based on and did not result from his I-A-O classification of January 22, 1952, but was based on and resulted from his I-A-O classification of September 23, 1952—a classification not mentioned or referred to in the petition or in any of the District Court's orders. Appellee did not appeal from his I-A-O classification of September 23, 1952, nor did he, on September 23, 1952, or at any time thereafter, request the local board to reopen his classification or to consider it anew. In short he failed to exhaust his administrative remedies and hence was not entitled to seek relief in the District Court.[20]

We conclude that, in granting the petition and in ordering appellee discharged and released from appellant's custody, the District Court erred.

Accordingly, the orders of June 18, 1954, June 23, 1954, and June 24 1954, are reversed and the case is remanded to the District Court with directions to enter an order discharging the order to show cause and remanding appellee to the custody of appellant or any other commanding officer of the Sixth Army.

(Endorsed:) Opinion. Filed Jun. 16, 1955.
Paul P. O'Brien, Clerk.

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[20] Williams v. United States, 9 Cir., 203 F. 2d 85; Skinner v. United States, 9 Cir., 215 F. 2d 767; Mason v. United States, 9 Cir., 218 F. 2d 375.

Appendix C

United States Court of Appeals
for the Ninth Circuit

Lieutenant General W. G. Wyman, Commanding Officer of the Sixth Army, Presidio of San Francisco, California, *Appellant,* vs. Russell Louis LaRose, *Appellee.*	No. 14,517

JUDGMENT.

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the Orders of the said District Court in this cause be, and hereby are reversed, and that the said cause be, and hereby is remanded to the said District Court, with directions to enter an order discharging the order to show cause

and remanding appellee to the custody of appellant or any other commanding officer of the Sixth Army.

(Endorsed) Judgment

Filed and Entered: June 16, 1955,

Paul P. O'Brien, Clerk.

Appendix D

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, July 25, 1955

Before MATHEWS and CHAMBERS, Circuit Judges, and BYRNE, District Judge.

ORDER DENYING PETITION FOR REHEARING.

On consideration thereof, and by direction of the Court, it is ordered that the petition of appellee, filed July 16, 1955, and within time allowed therefor by rule of Court for a rehearing of the above cause be, and hereby is denied.

Appendix E

STATUTES AND REGULATIONS INVOLVED.

Section 1(c) of the Act.

Section 1(c) of the Universal Military Training and Service Act (50 U.S.C. App. (Supp. V) §451 (c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, §1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, §1 (a), 65 Stat. 75.

Section 6(j) of the Act.

Section 6(j) of the act (50 U.S.C. App. (Supp. V) § 456 (j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical

views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice

shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U.S.C. App. (Supp. V) § 456 (j), 65 Stat. 75, 83, 86.

28 U.S.C. Section 2253.

28 U.S.C. Section 2253 provides:

"In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had."

Section 1622.11 Class I-A-O.

Section 1622.11 provides:

"Conscientious Objector Available for Noncombatant Military Service Only.—(a) In Class I-A-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces."

Section 1622.14 of the Regulations.

Section 1622.14 of the Selective Service Regulations (32 C.F.R. § 1622.14 (1951 Rev.)) provides:

"Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces."

Section 1622.25 Class II-S.

Section 1622.25 Class II-S provides:

"Registrant deferred because of activity in study. (a) In Class II-S shall be placed any registrant whose activity in study is found to be necessary to the maintenance of the national health, safety, or interest. (b) (8) The registrant has successfully completed his first year at a college, university, or similar institution of learning and achieved a scholastic standing on his first year's work which ranked him for that year within the upper one-half of the full-time male students in his class or has attained a score of 70 or more on the qualification test referred to in sub-paragraph (3) of this paragraph, and has been accepted for admission by a college, university, or similar institution of learning to the second-year class next commencing for a full-time course of instruction or has entered upon and is satisfactorily pursuing such course."

Section 1624.1 of the Regulations.

Section 1624.1 of the Selective Service Regulations (32 C.F.R. 1624.1 (1951 Rev.)) provides:

"Opportunity to appear in person. (a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of

Classification (SSS Form No. 110) to him. Such 10-day period may not be extended."

Section 1625.2 of the Regulations.

Section 1625.2 of the Selective Service Regulations (32 C.F.R. § 1625.2 (1951 Rev.)) provides:

"When registrant's classification may be reopened and considered anew. The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252), *unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."* (Emphasis added).

Section 1626.2 of the Regulations.

Section 1626.2 of the Selective Service Regulations (32 C.F.R. § 1626.2 (1951 Rev.)) provides:

"*Appeal by registrant and others.* (a) The registrant, any person who claims to be a dependent of the registrant, any person who prior to the classification appealed from filed a written request for the current occupational deferment of the registrant, or the government appeal agent may appeal to an appeal board from any classification of a registrant by the local board except that no such person may appeal from the determination of the registrant's physical or mental condition. (c) (1) Within 10 days after the date the local board mails to the registrant a Notice of Classification (SSS Form No. 110). (d) At any time prior to the date the local board mails to the registrant an Order to Report for Induction (SSS Form No. 252), the local board may permit any person described in paragraph (c) of this section to appeal even though the period for taking an appeal has elapsed, if it is satisfied that the failure of such person to appeal within such period was due to a lack of understanding of the right to appeal or to some cause beyond the control of such person. Unless the local board thereafter permits an appeal, the right of such persons to appeal shall expire at the end of the period provided for in paragraph (c) of this section. If an extension of time to appeal is granted by the local board, a record thereof shall be entered on the Classification Questionnaire (SSS Form No. 100) under the heading 'Minutes of Actions by Local Board and Appeal Board.'"

Section 1626.11 of the Regulations.

Section 1626.11 of the Selective Service Regulations (32 C.F.R. § 1626.11 (1951 Rev.)) provides:

"*How appeal to appeal board is taken.* (a) Any person entitled to do so may appeal to the appeal board by filing with the local board a written notice of appeal. Such notice need not be in any particular form but must state the name of the registrant and the name and identity of the person appealing so as to show the right of appeal. The language of any such notice shall be liberally construed in favor of the person filing the notice so as to permit the appeal."

Section 1626.13 of the Regulations.

Section 1626.13 of the Selective Service Regulations (32 C.F.R. § 1626.13 (1951 Rev.)) provides:

"*Local board to prepare appeal record and forward file.* (a) Immediately upon an appeal being taken to the appeal board by a person entitled to appeal, the local board shall prepare the Individual Appeal Record (SSS Form No. 120) in duplicate, attaching the original to the inside of the registrant's Cover Sheet (SSS Form No. 101) and placing the duplicate copy in the local board files."

Section 1626.14 of the Regulations.

Section 1626.14 of the Selective Service Regulations (32 C.F.R. § 1626.13 (1951 Rev.)) provides:

"*Time when record to be forwarded on appeal.* The registrant's file shall be forwarded to the appeal board, or appropriate panel thereof, immediately after the local board has complied with the provisions of

§ 1626.13, but in no event later than five days after the appeal is taken. The local board shall enter in the Classification Record (SSS Form No. 102) the date it transmits the registrant's file to the appeal board board or appropriate panel thereof."

Section 1626.25 of the Regulations.

Section 1626.25 of the Selective Service Regulations (32 C.F.R. § 1626.25 (1951 Rev.)) provides:

"*Special provisions when appeal involves claim that registrant is a conscientious objector.* (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action: (4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice."

Section 1626.41 of the Regulations.

Section 1626.41 of the Selective Service Regulations (31 C.F.R. § 1626.41 (1951 Rev.)) provides:

"*Appeal postpones induction.* A registrant shall not be inducted either during the period afforded him to take an appeal to the appeal board or during the time such an appeal is pending."